

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

2016 APR 25 P 2:1 FILE NO: _____

WAKE COUNTY, C.S.C.

STATE OF NORTH CAROLINA, BY CK
ex rel. Roy Cooper, Attorney General,)

Plaintiff,)

v.)

LIQUIDATION, LLC;)
LOAN SERVICING SOLUTION, LLC;)
SERVICING COMPANY DE, LLC;)
WILLIAM WALTER MCKIBBIN, III;)
KEVIN LEE CRONIN;)
MARK EDWARD WEINER; and)
BOBBY JOE MCKIBBIN; individually)
and collectively d/b/a AUTOLOANS, LLC;)
CAR LOAN, LLC; and SOVEREIGN)
LENDING SOLUTIONS, LLC; and)
Other unnamed individuals and entities;)

Defendants;)

COMPLAINT

And)

NORTH CAROLINA DIVISION OF)
MOTOR VEHICLES;)

Nominal Defendant only, named)
solely for purposes of injunctive)
relief.)

Plaintiff, the State of North Carolina, *ex rel.* Roy Cooper, Attorney General, by and through undersigned counsel, for its Complaint, alleges as follows:

I. INTRODUCTION

1. Since at least 2012, the Defendants have solicited and made over 700 vehicle title loans over the Internet to North Carolina consumers at triple-digit interest rates averaging 257%, which grossly exceed the interest rates allowed by North Carolina law. North Carolina consumers have made thousands of dollars in payments to Defendants on these usurious loans, without any meaningful chance of paying them off due to the loans' exorbitant interest rates. Further, in making usurious, unlicensed loans, Defendants have placed liens on North Carolina consumers' vehicle titles and have repossessed and sold consumers' vehicles, deepening consumers' financial distress by depriving them of vital transportation to and from their workplaces, homes, and children's schools. Defendants are actively continuing to collect on their illegal loans and to repossess consumers' vehicles.

2. This is an action for injunctive relief to restrain Defendants from making and collecting on usurious loans made to North Carolina consumers; to restrain Defendants from the illegal repossession or sale of North Carolina consumers' vehicles; to void Defendants' illegal loans; to cancel Defendants' liens; and to obtain restitution and other relief.

II. PARTIES

3. Plaintiff is the State of North Carolina, acting on relation of its Attorney General, Roy Cooper ("the State"), pursuant to authority granted by Chapters 75 and 114 of the North Carolina General Statutes.

4. Defendant Liquidation, LLC ("Liquidation") is an Indiana foreign limited liability corporation which purports to be organized in the Cook Islands, New Zealand. Upon information and belief, Defendant Liquidation has no place of business in New Zealand, and is organized in the Cook Islands solely to attempt to evade state lending laws and private legal actions. Defendant Liquidation is not authorized to conduct business in North Carolina and is not licensed as a consumer finance lender by the North Carolina Commissioner of Banks.

5. Defendant Loan Servicing Solution, LLC ("Loan Servicing Solution") is a foreign limited liability company organized under the laws of Delaware. Defendant Loan Servicing Solution is not authorized to conduct business in North Carolina and is not licensed as a consumer finance lender by the North Carolina Commissioner of Banks.

6. Defendant Servicing Company DE, LLC ("Servicing Company") is a foreign limited liability company organized under the laws of Delaware. Defendant Servicing Company is not authorized to conduct business in North Carolina and is not licensed as a consumer finance lender by the North Carolina Commissioner of Banks.

7. Defendant William Walter McKibbin, III ("W. McKibbin") is a resident of Palm Beach County, Florida. Upon information and belief, at all relevant times, Defendant W. McKibbin was an owner, officer, and/or control person of Defendants Liquidation, Loan Servicing Solution, and Servicing Company; and Defendant W. McKibbin actively directed,

controlled, participated in, and is responsible for, all the unlawful practices alleged in this Complaint.

8. Defendant Kevin Lee Cronin (“Cronin”) is a resident of Palm Beach County, Florida. Upon information and belief, at all relevant times, Defendant Cronin was an owner, officer, and/or control person of Defendants Liquidation, Loan Servicing Solution, and Servicing Company; and Defendant Cronin actively directed, controlled, participated in, and is responsible for, all the unlawful practices alleged in this Complaint.

9. Defendant Mark Edward Weiner (“Weiner”) is a resident of Palm Beach County, Florida. Upon information and belief, at all relevant times, Defendant Weiner was a manager and agent of Defendants Liquidation, Loan Servicing Solution, and Servicing Company; and Defendant Weiner actively directed, controlled, participated in, and is responsible for, all the unlawful practices alleged in this Complaint.

10. Defendant Bobby Joe McKibbin (“B. McKibbin”) is a resident of Marion County, Florida. Upon information and belief, at all relevant times, Defendant B. McKibbin was president of Defendant Servicing Company; and Defendant B. McKibbin actively directed, controlled, participated in, and is responsible for, all the unlawful practices alleged in this Complaint.

11. Upon information and belief, Defendants and unknown persons may have used or are using additional entities and/or fictitious names through which they have engaged or are engaging in the illegal activities described herein. The State reserves the right to reasonably amend its Complaint to name additional persons or entities as defendants to the extent they become known to the State.

12. Nominal Defendant, the North Carolina Division of Motor Vehicles (“NC-DMV”) is a division of the North Carolina Department of Transportation, an administrative agency of the State of North Carolina, which is responsible for generating and maintaining records of motor vehicle titles and recording and releasing any associated liens that may be recorded on motor vehicle titles. NC-DMV has no relationship to Defendants. NC-DMV is named as a defendant in this action solely for the purpose of effectuating injunctive relief to restrain Defendants’ illegal activities, including Defendants’ placement of liens on North Carolina consumers’ vehicle titles and Defendants’ transfer of such titles; and to effect the cancellation of Defendants’ liens. Plaintiff seeks no monetary relief from NC-DMV. Due to the fact that NC-DMV is included as a party to this action solely for jurisdictional and equitable purposes regarding any future orders of the Court affecting automobile titles and associated liens recorded and maintained as a governmental function of NC-DMV, the terms “Defendant” or “Defendants” do not include NC-DMV; and NC-DMV is separately identified as “NC-DMV” where applicable.

III. FACTUAL BACKGROUND

A. Defendants’ Loan Scheme: Fictitious Loan Entities and False Addresses Are Intended to Conceal Defendants’ True Identities and Location

13. Beginning in or about 2012, Defendants W. McKibbin, Cronin, Weiner, and B. McKibbin, in concert with other individuals and entities, began soliciting and offering consumer loans to consumers in North Carolina and throughout the United States. The foregoing Defendants advertised under the name “Title Loan America,” among others, and solicited loans through television commercials, over the Internet at the website www.titleloanamerica.com, among others, and through telephone solicitations. The loans were initially made through an entity named Sovereign Lending Solutions, LLC (“Sovereign Lending”), which did business as “Title Loan America.” (The operation and terms of the loans are described in Part III.B. below.) Defendant W. McKibbin was the administrator and technical contact for the “Title Loan America” website.

14. In an attempt to evade states’ lending laws and to lead consumers to believe that state laws did not apply to the loans, Defendants W. McKibbin, Cronin, Weiner, B. McKibbin, and others acting in concert with them, held out Sovereign Lending as being “an economic development arm” and “tribal enterprise” of the Lac Vieux Desert Band of Lake Superior Chippewa Indian tribe in Michigan. However, upon information and belief, Sovereign Lending was at all relevant times, owned and/or controlled by Defendants W. McKibbin, Cronin, Weiner, and B. McKibbin, and others acting in concert with them.

15. Once funded, the Title Loan America loans were initially serviced by RS Financial Management, LLC, a subsidiary of RS Financial Services, LLC (collectively, “RS Financial”). Both RS Financial entities were incorporated in Delaware in 2011. Upon information and belief, RS Financial was created and funded by several individuals and investors who subsequently turned over the lending enterprise to Defendants W. McKibbin, Cronin, Weiner, and B. McKibbin to control and to manage the day-to-day operations.

16. In or about April 2014, Sovereign Lending ceased doing business and assigned its loan portfolio to an entity called Management Solution, LLC (“Management Solution”). Management Solution was incorporated in Delaware in February 2014, by Defendant W. McKibbin.

17. Upon information and belief, during the same time period, in 2014, Management Solution ostensibly assigned its Sovereign Lending loan portfolio to a supposed third entity, “Car Loan, LLC” (“Car Loan”). Although Car Loan purports to be incorporated in the Cook Islands, upon information and belief, it is a fictitious entity and/or alias under which Defendants W. McKibbin, Cronin, Weiner, and B. McKibbin, and others acting in concert with them, have serviced the Title Loan America loans and have solicited and made additional loans to North Carolina and other consumers.

18. In July 2014, Management Solution was dissolved. Upon information and belief, since the dissolution of Sovereign Lending and Management Solution, Defendants W. McKibbin, Cronin, Weiner, and B. McKibbin, and others acting in concert with them, have used numerous fictitious names under which they have solicited, issued, and serviced loans made to North Carolina and other consumers—including the names “AutoLoans, LLC,” “Car Loan, LLC,” and “Sovereign Lending Solutions, LLC.” Upon information and belief, none of the

foregoing fictitious entities held out by Defendants is incorporated in any state in the United States and is not licensed to make consumer loans in North Carolina or any state.

19. In and since 2014, Defendants W. McKibbin, Cronin, Weiner, and B. McKibbin, and others acting in concert with them, have created numerous entities through which they have operated their illegal loan enterprise. In late 2014, the foregoing individual Defendants and others acting in concert with them created Defendants (a) Liquidation; (b) Loan Servicing Solution; and (c) Servicing Company—all of which are interrelated and are owned, operated, and controlled by the individual Defendants and others operating in concert with them.

20. The individual Defendants have operated the enterprise through Defendant Loan Servicing Solution, by, among other actions, causing consumers' loan payments to be deposited into bank accounts controlled by the individual Defendants in the name(s) of Loan Servicing Solution, among other names—although many consumers' loans are ostensibly made in the name(s) of "AutoLoans, LLC," "Car Loan, LLC," and "Sovereign Lending Solutions, LLC"—which entities do not exist.

21. The individual Defendants have assigned many consumers' loans to Defendant Liquidation. Through Defendant Liquidation, among other actions, the individual Defendants have caused repossession of North Carolina consumers' vehicles; illegally transferred consumers' vehicle titles to themselves; applied for new titles to consumers' vehicles in the name of Liquidation (often in the State of Indiana); and caused consumers' vehicles to be sold at wholesale auction.

22. The individual Defendants also have operated their enterprise through Defendant Servicing Company. The individual Defendants have caused some of the enterprise's illegal proceeds—including from consumers' payments on illegal loans, and from illegal sales of consumers' vehicles—to be diverted to Servicing Company. In turn, among other actions, Servicing Company has acted as an operating company for the illegal enterprise by paying Defendants' employees and paying for some of the enterprise's operating expenses.

23. Defendants W. McKibbin, Cronin, Weiner, B. McKibbin, Liquidation, Loan Servicing Solution, and Servicing Company, individually and collectively doing business as AutoLoans, LLC, Car Loan, LLC, and Sovereign Lending Solution, LLC, among other names, (referred to throughout the Complaint collectively as "Defendants"), have acted as each other's alter egos at all relevant times in committing the violations described in this Complaint. In order to do so, Defendants disregarded the corporate structure in order to perpetrate wrongful conduct and defeat otherwise valid claims.

24. Among other actions, Defendants have not treated the corporations as distinct business entities, as they have commingled corporate assets and funds; failed to maintain adequate corporate records; used the corporations as mere shells; disregarded legal formalities; and used corporate funds and assets for non-corporate, including for personal, purposes. Accordingly, Defendants are jointly and severally liable for each other's wrongful acts or omissions.

25. Defendants have gone to extraordinary lengths to conceal their actual physical business location(s) and identities. Defendants have represented in written documents and communications, including loan contracts and vehicle title documents, to the public and to government agencies—including to consumers; NC-DMV; financial institutions; towing companies; and automobile auction houses—that Defendants are physically located and doing business at the following addresses, among others:

- 340 S. Lemon Ave. # 4562, Walnut, California 91789
- 1000 N. West St., Suite 1200, Wilmington, Delaware 19801
- 433 Plaza Real, Suite 275, Boca Raton, Florida 33432
- 2501 N. Federal Highway, Boca Raton, Florida 33431
- 1701 S. Federal Highway, Boca Raton, Florida 33431
- P.O. Box 477, Boca Raton, Florida 33427
- 1332 NW 3rd St., Deerfield Beach, Florida 33442
- 101 W. Ohio St., Suite 2000B, Indianapolis, Indiana 46204
- 117 Broadway, Suite 100, Chesterton, Indiana 46304
- 6170 W. Lake Mead Blvd., Las Vegas, Nevada 89108
- 1930 Village Center Circle, Las Vegas, Nevada 89134
- 500 Westover Dr., Sanford, North Carolina 27330
- 9435 Waterstone Blvd., Suite 140, Cincinnati, Ohio 45249
- ANZ House, Main Road, Rarotonga, Cook Islands
- P.O. Box 11, Rarotonga, Cook Islands

26. In fact, contrary to Defendants' representations, upon investigation by the State, Defendants are not physically located at *any* of the above addresses. Instead, almost all of the domestic addresses held out by Defendants are: (1) UPS stores or Fed Ex "mail drops" where Defendants rent a mailbox but have no physical presence; (2) other commercial mail boxes; (3) "virtual" offices that merely receive Defendants' mail and accept phone messages; (4) mail forwarding services that receive mail for Defendants, open it, scan it, and email the contents to Defendants; or (5) address(es) of Defendants' former or current registered agent(s).

27. The two Cook Islands, New Zealand addresses are those of Southpac Trust Limited ("Southpac"). Upon information and belief, Southpac is listed as a registered agent of Defendant Liquidation. On its website, www.southpac-trust.com, Southpac advertises that it is "the Premiere Offshore Trust Company," that an LLC may be formed within 24 hours, and the Cook Islands' remote location "deters creditors."

28. Upon information and belief, Defendants' actual, principal place of business is in Boca Raton, Florida and/or in Palm Beach County, Florida at one or more undisclosed location(s).

B. Defendants' Loan Activities in North Carolina

29. Defendants have solicited North Carolina consumers through, among other means, television advertisements, Internet websites, and telephone solicitations. Defendants'

solicitations target consumers who are in financial distress, and represent that borrowers can get a loan easily and quickly regardless of their credit history.

30. When North Carolina consumers have contacted Defendants in response to Defendants' solicitations, in phone and e-mail communications, Defendants and their representatives have routinely misstated or omitted material terms of the loans, including, but not limited to the following misrepresentations and omissions:

- (a) Misstating the loans' interest rates, by quoting to consumers interest rates substantially lower than the loans' actual interest rates;
- (b) Failing to disclose to consumers that almost all of Defendants' loans contain a gigantic balloon payment that is due after 11 months, which is typically in excess of the original loan amount;
- (c) Failing to disclose that virtually all of consumers' loan payments, until the final balloon payment, are interest-only, and therefore consumers' monthly payments will not reduce the loan balance;
- (d) Failing to provide consumers with written disclosures of the loans' terms until after consumers have agreed to enter into the loans; and
- (e) In many instances, failing to provide consumers with their written loan agreement until after the loan is made and consumers later, and often repeatedly, demand a copy of their loan documents.

31. Defendants typically instruct consumers to indicate their acceptance of the loans by clicking on an e-mail. Once consumers indicate their acceptance, Defendants mail consumers two forms to sign: (a) a "Lien Recording Application" showing Defendants have taken a lien on the consumer's vehicle; and (b) a "Power of Attorney" form appointing Defendants as the consumer's attorney-in-fact in applying for a certificate of title for the consumer's vehicle.

32. Consumers are instructed to sign the documents and return them, together with the borrower's original vehicle title, by Fed Ex to Defendants. After Defendants receive the documents and the consumer's automobile title, Defendants mail consumers a GPS tracker, which consumers are instructed to install on their vehicle. After consumers install the tracker, Defendants deposit the loan amount in the consumer's bank account.

33. Based upon documents the State has obtained from third parties, including NC-DMV, Defendants have made at least 700 loans to North Carolina consumer borrowers. Defendants have loaned amounts ranging from a low of \$800.00 to an approximate high of \$7,000.00, with the majority of borrowers receiving loan amounts ranging from \$1000.00 to \$2500.00. **The interest rates on the loans range from a low of 161% to a high of 571% APR, and the average APR on the loans is 257%.** The majority of the loans require borrowers to make monthly payments for a period of 11 months, and then contain a final balloon payment due in the twelfth month, in an amount that often exceeds the original loan amount.

34. Defendants' consumer loan agreements purport to be "pawn" transactions, and are styled as "Pawn Ticket and Agreement." However, in fact, Defendants' transactions with North Carolina borrowers constitute consumer loans and are not pawn transactions, as at all times, consumers retain possession of their vehicles, unless and until Defendants seize them through illegal repossession.

35. Each of Defendants' loan agreements with North Carolina borrowers expressly provide that, if Defendants repossess and sell the consumer's vehicle, Defendants may retain any and all surpluses that Defendants receive in excess of any amounts due on the loan, and that Defendants are not required to account for and pay the borrower any surplus.

36. Defendants' loan agreements with North Carolina borrowers provide that any consumer disputes arising out of the agreements shall be submitted to arbitration administered by the "Arbitrators' and Mediators' Institute of New Zealand"—to be held in Auckland, New Zealand; and provide that the borrower shall be responsible for one-half of the mediator's fee and the entirety of the borrower's expenses incurred in attending the arbitration.

C. Experiences of North Carolina Borrowers

37. The oppressive and often undisclosed terms of Defendants' loans have imposed substantial hardships on already financially-strapped North Carolina borrowers. Numerous consumers have asserted that, after making multiple payments on the loans, they believed they were close to paying their loans off. However, after contacting Defendants and requesting a copy of their loan agreements or receiving collections calls or notices from Defendants, consumers learned that, due to the loans' exorbitant interest rates, virtually all of their payments had been allocated to interest—thereby making it impossible for most consumers to pay off the loans, and causing many to lose their vehicles.

38. For example, in 2013, Tracey Childs of Greensboro saw a television advertisement for Title Loan America and contacted Defendants about a loan. Mrs. Child's family was experiencing financial difficulties because her husband has a rare nerve disease, and they, their family, and friends had paid \$25,000.00 so that her husband could take part in a transplant study at Northwestern Hospital in Chicago. Because of her husband's disease, he was unable to work; and they found themselves struggling to make their mortgage payment.

39. After sending Defendants their car title and installing a GPS tracker on their 2004 Saturn, in July 2013, the Childs received a loan from Defendants in the amount of \$1300.00, which was deposited into the Childs' bank account. For over a year, the Childs made payments on the loan totaling \$3388.00—over \$2000.00 more than their original loan amount. However, after a year, they were told by Defendants that they owed an additional \$1700.00, which surprised them because they had not received a copy of their loan agreement and were not aware of the balloon payment. The Childs were unable to raise the funds, and in October 2014, Defendants had the Childs' Saturn car towed away and sold at auction.

40. Similarly, Michael Adams of Garner and his family experienced financial difficulties in 2014. He and his wife assumed the care of his mother-in-law who suffered a stroke, and of his father-in-law, who was diagnosed with stage-four cancer. Because of their illness, Mr. Adams' in-laws and a niece they were caring moved in with the Adams and the Adams' children. As a result, the expanded family had to move, further straining their finances.

41. During an on-line search for a loan, Mr. Adams came across Defendants' Title Loan America website, and contacted Defendants. In or about February or March of 2014, the Adams received a loan of \$1250.00, which was secured by their 2003 Acura MDX vehicle. After making payments for almost a year, in excess of \$4000.00, Defendants told the Adams that they still owed \$4429.00 on the loan. The Adams did not understand how they owed more than \$4,000.00 on the loan when they had already paid over \$4000.00. Because they did not want to lose their car, the Adams asked for an extension to make the payment and believed they had received one. Instead, in or about February 2015, Defendants repossessed the Adams' car, telling Mr. Adams that his payment was late. The Adams' car was sold at auction. Ultimately, Mr. Adams sought legal counsel, and his attorney reached a settlement with the auction house for \$3,000.00—but he was unable to recover his vehicle.

42. Another borrower, A.B., her husband and four children of Burgaw, North Carolina experienced financial difficulties in late 2014; the family's landlord was foreclosed on, and the family had to move quickly to another house. In doing research on-line, A.B. came across Defendants and inquired about a loan. Defendants represented that they had "excellent" service, and assured A.B. "complete satisfaction" with their services.

43. A.B. provided Defendants with pictures of her car, a 2004 Ford Explorer; her vehicle title; and her husband's pay stub, among other documents. Defendants told her that they could issue her a loan in the amount of \$2900.00. A.B. understood from Defendants that the loan would be at an interest rate of 18%, and that their monthly payments would be \$531.00 for six months, and then the loan would be paid off.

44. After making two payments, A.B. realized she and her husband did not have a copy of the loan agreement. A.B. contacted Defendants and requested a copy of the loan contract. Initially, Defendants failed to send it. After A.B. repeatedly requested the documents and threatened to stop making payments, Defendants sent the loan agreement to A.B. Upon reviewing it, she realized that the interest rate was 218%, not 18%; there were 11 payments of \$531.00, not 6 payments; and there was a balloon payment of \$3531.00 in the twelfth month—for a total repayment of \$9372.00 for a loan of \$2900.00.

45. When A.B. called Defendants and complained that she felt like she and her family had been scammed, Defendants told her they "knew where she lived and worked," and that she "was messing with the wrong people." She and her family began receiving threatening and harassing phone calls from Defendants, who threatened to repossess her car.

46. A.B. contacted NC-DMV, which informed her that there was a lien on her car by "AutoLoans, LLC," and advised her to contact the North Carolina Attorney General's Office, which she did. To date, A.B.'s vehicle has not been repossessed, but she and her family have

temporarily removed the car to another location because they fear they will lose their car because they cannot afford to pay an additional \$8310.00 on the loan.

47. Many North Carolina consumers have had similar experiences as Mrs. Childs, Mr. Adams, and A.B. The affidavits of three North Carolina consumer victims of Defendants, Michael Adams, Tracey Childs, Derron C. Lee, and Ponecha Mitchell, are attached as exhibits to Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction, together with the affidavits of Consumer Specialist David C. Evers, Paralegal Jennifer L. Sugar, and Special Deputy Attorney General M. Lynne Weaver of the North Carolina Department of Justice, all of which are incorporated herein.

IV. CLAIMS FOR RELIEF

COUNT I: VIOLATIONS OF THE CONSUMER FINANCE ACT: N.C. GEN. STAT. § 53-164, et seq.

48. The State realleges and incorporates herein the allegations of paragraphs 1 through 47 above.

49. The Consumer Finance Act, N.C. Gen. Stat. § 53-166(a), requires that any person engaged in the business of lending cannot "directly or indirectly" contract for or receive consideration greater than that allowed by Chapter 24 of the North Carolina General Statutes without being licensed by the North Carolina Commissioner of Banks as a consumer finance lender.

50. The maximum rate allowed by Chapter 24, N.C. Gen. Stat. § 24-1.1, on contract loans of \$25,000 or less, is 16% per annum.

51. The Consumer Finance Act provides an exception to the 16% cap on interest rates set forth by Chapter 24, and allows consumer finance lenders licensed by the Commissioner of Banks to make consumer loans of up to \$15,000 at interest rates permitted by the Act.

52. For loans made on or after July 1, 2013,¹ pursuant to N.C. Gen. Stat. § 53-176, the maximum interest rate that may be charged by licensed lenders to North Carolina consumer borrowers is 30% per annum.

53. For loans made prior to July 1, 2013, pursuant to former N.C. Gen. Stat. § 53-173, the maximum interest rate that may be charged by licensed lenders to North Carolina consumer borrowers is 36% per annum.

¹ Session Law 2013-162 (SB 489), which became effective on July 1, 2013, made amendments to the Consumer Finance Act, which included increasing the maximum loan amount permitted under the Act from \$10,000 to \$15,000; altering the brackets governing the blended interest rates authorized by the Act; and reducing the maximum interest rate from 36% per annum to 30% per annum.

54. In an effort to address “illicit lending schemes” devised by lenders seeking to evade state usury laws, in 2006, the North Carolina General Assembly amended the Consumer Finance Act to add a new provision, N.C. Gen. Stat. § 53-166(b), which expressly provides that the prohibitions of N.C. Gen. Stat. § 53-166(a) “apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever.”

55. Defendants have engaged in the business of lending and are therefore subject to the provisions of the Consumer Finance Act, including N.C. Gen. Stat. § 53-166. Defendants are not licensed as consumer finance lenders by the Commissioner of Banks, and have never been so licensed.

56. Defendants have regularly made consumer loans to North Carolina borrowers at rates far in excess of the allowable limits in the Consumer Finance Act.

57. The Consumer Finance Act, N.C. Gen. Stat. § 53-166(d), expressly provides that loans made in violation of the Act are “void,” and further provides that “any party in violation shall not collect, receive, or retain any principal or charges whatsoever with respect to the [illegal] loan.”

58. Pursuant to N.C. Gen. Stat. § 53-190(a), loans made to North Carolina borrowers in violation of the Consumer Finance Act are unenforceable in North Carolina notwithstanding Defendants’ attempt to style the loans as having been made in or under the laws of the Cook Islands, New Zealand. N.C. Gen. Stat. § 53-190(a) expressly provides:

No loan contract made outside this State in the amount or of the value of ten thousand dollars (\$10,000) or less, for which greater consideration or charges than are authorized by G.S. 53-173 and G.S. 53-176 of this Article have been charged, contracted for, or received, shall be enforced in this State. Provided, the foregoing shall not apply to loan contracts in which all contractual activities, including solicitation, discussion, negotiation, offer, acceptance, signing of documents, and delivery and receipt of funds, occur entirely outside North Carolina.

59. Defendants’ loans are unenforceable pursuant to N.C. Gen. Stat. § 53-190(a) because the following contractual activities, among others, undisputedly occur in North Carolina:

- (a) Defendants have solicited North Carolina resident borrowers through the Internet, television advertisements, telephone, and other means which have targeted and reached North Carolina borrowers in their homes;
- (b) Discussions by Defendants with North Carolina resident borrowers regarding the loans have been conducted over the Internet or by telephone with borrowers in their homes or while such borrowers were located in North Carolina;

- (c) When transmitted, Defendants transmitted the loan documents to North Carolina resident borrowers via the Internet to borrowers while the borrowers were located in North Carolina;
- (d) North Carolina resident borrowers were requested by Defendants to electronically sign the loan documents at their computers, and such computers were located in borrowers' homes or elsewhere in North Carolina;
- (e) Defendants have disbursed loan funds to North Carolina borrowers to borrowers' banks and bank accounts located in North Carolina; and
- (f) Defendants have received loan payments from North Carolina borrowers from funds in borrowers' bank accounts located in North Carolina.

60. N.C. Gen. Stat. § 53-180(g) prohibits deceptive acts or practices both with regard to the making of loans and collecting or attempting to collect money alleged to be due under loans subject to the Act.

61. Accordingly, Defendants' activities are prohibited by the Consumer Finance Act, and the State is entitled to injunctive relief prohibiting Defendants from offering or making any consumer loans to North Carolina borrowers in violation of the Act, and from collecting on or retaining any principal or charges collected from such borrowers. Further, Defendants' loans to North Carolina borrowers are void, and the State is entitled to injunctive relief cancelling Defendants' illegal loan contracts and illegal liens placed on consumers' vehicle titles.

COUNT II:
VIOLATIONS OF NORTH CAROLINA USURY STATUTE:
N.C. GEN. STAT. CHAPTER 24

62. The State realleges and incorporates herein the allegations of paragraphs 1 through 61 above.

63. The usury laws of North Carolina make clear that the protection of North Carolina borrowers from illegal, usurious loans is a "paramount public policy" of the State, as N.C. Gen. Stat. § 24-2.1(g) mandates: "It is the paramount public policy of North Carolina to protect North Carolina resident borrowers through the application of North Carolina interest laws."

64. North Carolina usury law, N.C. Gen. Stat. § 24-1.1, provides that the maximum interest rate that may be charged on contract loans of \$25,000 or less is 16% per annum.

65. North Carolina's usury laws mandate that they are to be applied to protect North Carolina resident borrowers, "regardless of the situs of the contract." N.C. Gen. Stat. § 24-2.1(a), (b).

66. Defendants' consumer loans to North Carolina borrowers are usurious because the rates and charges of such loans grossly exceed the rates and charges permitted by North Carolina law.

67. Pursuant to N.C. Gen. Stat. § 24-2, the penalty for usury is the forfeiture of interest on the loan, together with the recovery of twice the amount of interest paid by the borrower. Accordingly, pursuant to N.C. Gen. Stat. § 24-2, the interest on any loans made, held, or collected on by Defendants should be forfeited, and Defendants should be required to disgorge twice the amount of all interest collected from North Carolina borrowers on such loans.

COUNT III:
VIOLATIONS OF PAWNBROKERS AND CASH CONVERTERS MODERNIZATION ACT:
N.C. GEN. STAT. § 66-385, et seq.
(formerly PAWNBROKERS MODERNIZATION ACT, N.C. GEN. STAT. § 91A-1, et seq.)

68. The State realleges and incorporates herein the allegations of paragraphs 1 through 67 above.

69. The Pawnbrokers and Cash Converters Modernization Act, N.C. Gen. Stat. § 66-385, *et seq.*, formerly the Pawnbrokers Modernization Act, N.C. Gen. Stat. § 91A-1, *et seq.*, mandates (hereafter "Pawnbroker Act"), among other requirements, that:

- (a) A pawnbroker be licensed by the city or county in which the pawnbroker is located, N.C. Gen. Stat. § 66-390 (formerly N.C. Gen. Stat. § 91A-6);
- (b) A pawnbroker may charge an effective rate of interest no greater than two percent (2%) per month, in addition to certain fees specified by the statute, N.C. Gen. Stat. § 66-393 (formerly N.C. Gen. Stat. § 91A-8); and
- (c) A pawnbroker "shall not ... take as pledged goods any ... motor vehicle other than a motorcycle." N.C. Gen. Stat. § 66-395(9) (formerly N.C. Gen. Stat. § 91A-10(9)).

70. Accordingly, even if Defendants' loans to North Carolina borrowers may be construed as pawn transactions—which the State does not concede—Defendants' loans are in direct violation of the Pawnbroker Act, in that, among other things:

- (a) Defendants are not licensed in any North Carolina city or county as a pawnbroker;
- (b) Defendants loans' are at interest rates that grossly exceed the interest rate allowed by the Pawnbroker Act; and
- (c) Defendants have taken consumers' vehicle titles as security for the loans, which is expressly prohibited by the Pawnbroker Act, which requires that

only tangible personal property may be taken in pawn, and expressly prohibits the taking as pledged goods any motor vehicle.

71. Pursuant to N.C. Gen. Stat. § 66-396 (formerly N.C. Gen. Stat. § 91A-11), the violation of the Pawnbroker Act is a criminal misdemeanor, and any contract of pawn that violates the Act “shall be void,” and the pawnbroker “shall have no right to collect, receive or retain any interest or fee whatsoever with respect to such pawn.”

72. Accordingly, to any extent Defendants’ loans to North Carolina borrowers may be construed as pawn transactions—which the State does not concede—Defendants’ pawn contracts should be declared void, and Defendants should be enjoined from collecting, receiving, or retaining any interest or fees with regard to such pawn transactions.

COUNT IV:
VIOLATIONS OF THE UNIFORM COMMERCIAL CODE:
N.C. GEN. STAT. § 25-9-615

73. The State realleges and incorporates herein the allegations of paragraphs 1 through 72 above.

74. Defendants have failed to account for and retained surplus amounts from sales of vehicles repossessed after default, in violation of the Uniform Commercial Code, N.C. Gen. Stat. § 25-9-615, which requires that a lender in a secured transaction account for and pay to the debtor any surplus after disposing of the goods and collecting reasonable costs.

COUNT V:
VIOLATIONS OF UNFAIR AND DECEPTIVE PRACTICES ACT:
N.C. GEN. STAT. § 75-1.1

75. The State realleges and incorporates herein the allegations of paragraphs 1 through 74 above.

76. In the course of offering, arranging, making and collecting on their illegal consumer loans, Defendants have engaged in unfair and deceptive acts or practices in trade or commerce in North Carolina in violation of N.C. Gen. Stat. § 75-1.1.

77. Defendants’ unfair and deceptive acts or practices include, but are not limited to, the following:

- (a) Engaging in misrepresentations and omissions of material facts in soliciting and making consumer loans to North Carolina borrowers, including but not limited to the following:
 - (i) Misstating the loans’ interest rates, by quoting to consumers interest rates substantially lower than the loans’ actual interest rates;

- (ii) Failing to disclose to consumers that almost all of Defendants' loans contain an onerous balloon payment that is due after 11 months, which is typically in excess of the original loan amount;
 - (iii) Failing to disclose that virtually all of consumers' loan payments, until the final balloon payment, are interest-only, and therefore consumers' monthly payments will not reduce the loan balance;
 - (iv) Failing to provide consumers with written disclosures of the loans' terms until after consumers have agreed to enter into the loans; and
 - (v) In many instances, failing to provide consumers with their written loan agreement until after the loan is made and consumers later, and often repeatedly, demand a copy of their loan documents.
- (b) Engaging in an unfair business enterprise of offering, making, and collecting on consumer loans to North Carolina borrowers, when such loans are in gross violation of the usury laws of this State and violate the public policy of this State;
 - (c) Making and collecting on loans at oppressive and unfair rates, and making such loans without accounting for the borrower's ability to repay;
 - (d) Taking North Carolina consumers' car titles as security for the loans, when the loans were illegal and void from inception;
 - (e) Attempting to circumvent North Carolina lending and consumer protection laws by deceptively asserting that some of the loans were made by an Indian tribe and are not subject to North Carolina lending laws, despite the fact Defendants are not a tribal enterprise, and cannot claim tribal sovereignty for their lending and collections activities;
 - (f) Deceptively asserting that Defendants' loans are made in the Cook Islands, New Zealand, and are not subject to North Carolina law; when, in fact, North Carolina statutory law expressly provides that the loans are made in North Carolina, and are governed by North Carolina law;
 - (g) Deceptively styling Defendants' loans as "pawn" transactions as a subterfuge to attempt to evade North Carolina lending laws when Defendants' transactions constitute consumer loans;
 - (h) Violating the Pawnbrokers Act, as alleged above;
 - (i) Engaging in prohibited collections activity, including repossessing and selling North Carolina consumers' vehicles in collecting on illegal loans, causing further harm to borrowers; and

- (j) In repossessing and selling North Carolina consumers' vehicles, failing to account to borrowers for surplus proceeds and to pay over any surplus to borrowers.

78. Pursuant to N.C. Gen. Stat. § 75-14, the Attorney General has the right to obtain injunctive relief to restrain Defendants from further violations of N.C. Gen. Stat. § 75-1.1.

79. Pursuant to N.C. Gen. Stat. § 75-15.1, the Attorney General has the right to obtain a refund of moneys obtained by Defendants as a result of violations of N.C. Gen. Stat. § 75-1.1.

80. Pursuant to N.C. Gen. Stat. § 75-15.1, the Attorney General has the right to obtain civil penalties for Defendants' willful violations of North Carolina law.

V. PRAYER FOR RELIEF

WHEREFORE, the State of North Carolina prays the Court for the following relief:

A. That Defendants and their officers, managers, members, organizers, and employees be temporarily, preliminarily and permanently enjoined from offering, making, arranging, or collecting on loans, including loans made in the guise of pawns, to North Carolina consumers;

B. That Defendants and their officers, managers, members, organizers, and employees be temporarily, preliminarily and permanently enjoined from repossessing or selling any vehicle owned by a North Carolina consumer or located in the State of North Carolina; and to the extent that there are any such vehicles which have been repossessed by Defendants but not yet sold, that such vehicle be returned to the North Carolina consumer;

C. That Defendants and their officers, managers, members, organizers, and employees be ordered to surrender any and all original North Carolina vehicle titles, and/or any and all original titles to vehicles owned by a North Carolina consumer, back to the North Carolina consumer;

D. That Defendants and their officers, managers, members, organizers, and employees be temporarily, preliminarily and permanently enjoined from placing liens on vehicles or vehicle titles of North Carolina consumers, and from transferring such titles, except to transfer titles back to the consumer;

E. That Defendants' liens on North Carolina consumers' vehicle titles be cancelled; and the Court enter an order temporarily, preliminarily and permanently authorizing NC-DMV to reject, block and/or cancel any and all liens currently recorded, in the process of being recorded, or sought to be recorded on North Carolina vehicle titles by Defendants, including blocking any transfers of such titles by Defendants;

F. That all usurious loans made to North Carolina consumers by Defendants be declared void pursuant to N.C. Gen. Stat. § 53-166(d), and all money collected by Defendants pursuant to such unlawful loans be refunded, including principal, interest, resale proceeds, and any other charges or proceeds;

G. That all loans made or collected on by Defendants at rates in excess of the interest rates allowed by Chapter 24 of the General Statutes, be declared usurious and Defendants be ordered to forfeit all interest and to refund two times the interest collected from North Carolina borrowers;

H. That all loans made or collected on by Defendants in violation of N.C. Gen. Stat. § 75-1.1, *et seq.*, be cancelled pursuant to N.C. Gen. Stat. § 75-15.1, and that Defendants be ordered to refund all money collected from such loans;

I. That Defendants be ordered to account for and refund all surpluses collected and retained in connection with loans made to North Carolina consumers, in violation of the Uniform Commercial Code, N.C. Gen. Stat. § 25-9-615;

J. That Defendants be temporarily and preliminarily enjoined from destroying, removing, transferring, erasing, or otherwise disposing of any business or financial records relating to the Defendants' vehicle title loan services;

K. That to preserve assets for the payment of restitution to North Carolina consumers, that funds in bank accounts controlled by Defendants be ordered frozen and the Defendants restrained from withdrawing any funds required to pay such restitution without Court approval;

L. That Defendants be required to pay appropriate civil penalties pursuant to N.C. Gen. Stat. § 75-8 and § 75-15.2; and

M. That the Court award the State attorneys' fees and costs, and such other and further relief as may be just and proper.

This the 25th day of April, 2016.

ROY COOPER
NORTH CAROLINA ATTORNEY GENERAL

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